

Remarks

The preceding amendments and following remarks are submitted in response to the Official Action of the Examiner mailed December 7, 2005. Claims 26-38 are pending in this Application. Claims 26, 34, 36, and 37 have been amended. Support for the amendments is found in the specification, claims, and drawings as originally filed. No new matter has been added. Reconsideration, examination and allowance of all pending claims are respectfully requested.

Finality of Office Action

For the reasons set forth in the petition filed herewith, Applicants respectfully request the finality of the Office Action be withdrawn as being improper after RCE.

Rejections under 35 U.S.C. § 103(a)

Claims 26, 28, and 32-36 remain rejected as being obvious over Daroga (US 4,631,872) in view of Trice (US 3,251,159). The Examiner repeated the rejection from the previous Office Action, but did not address Applicants' arguments and comments set forth in the response filed with the RCE. If this rejection is maintained, Applicants respectfully request the Examiner address Applicants' arguments on pages 5-9 of the response filed October 14, 2005 in the next Office Action.

In addition to the above rejection, the Examiner rejected claims 26, 28, 34, and 36 over a combination of Rudinger, Daroga, Trice, Mayland, Hoshiko or Staub, and Holmes. Applicants submit that the combination of Daroga and Trice with additional references used for this rejection is an indication that the combination of Daroga and Trice alone does not teach or suggest each and every element of the claims. For the reasons set forth on pages 5-9 of the response filed October 14, 2005, and in view of the fact that the Examiner has rejected the same claims using Daroga and Trice with additional references, Applicants respectfully submit that the combination of Daroga and Trice does not appear to teach or suggest each and every element of the claims.

Applicants submit that neither Daroga nor Trice teach a "kit" as is recited in the original claims. However, in the interest of furthering prosecution, independent claims

26, 34, and 36 have been amended to clarify the kit as including a packaged set of objects. Applicants submit that the permanent, underground shelter of Daroga cannot be seen to be a kit including a packaged set of objects, and more particularly, a packaged set of portable objects, as is claimed. Additionally, Trice does not supply what Daroga lacks because Trice is also directed to a permanent, underground shelter that is assembled on site in a hole. Thus, Trice cannot be deemed to teach a kit including a packaged set of portable objects, as is now claimed. Thus, the combination of Daroga and Trice fails to teach or suggest each and every element of the claims. Withdrawal of the rejection is respectfully requested.

Claims 27, 29, 30, 31, and 35 are rejected as being obvious over various combinations of Daroga and Trice and further in view of Connor, Mayland, Hoshiko, or Staub, Jr. et al. Applicant respectfully traverses the rejections. Neither Daroga, Trice, or a combination of the references teaches the basic elements of independent claim 26 for the reasons set forth above. None of Connor, Mayland, Hoshiko, or Staub, Jr. et al. provide what Daroga and Trice lack.

As with the first rejection, the Examiner repeated this rejection from the previous Office Action, but did not address Applicants' arguments and comments set forth in the response filed with the RCE. If this rejection is maintained, Applicants respectfully request the Examiner address Applicants' arguments on pages 9-11 of the response filed October 14, 2005 in the next Office Action.

Claims 26, 28-31, 34, and 36 are also rejected as being obvious over Rudinger (US 2,977,723) in view of Trice and further in view of Daroga, Mayland, Hoshiko or Staub. The Examiner asserts that even though Rudinger teaches a bomb shelter made of poured concrete, it would have been obvious to make Rudinger's shelter of parts assembled on site in view of the teachings of Trice, and that in doing so, the Rudinger shelter would be considered a "kit" and all of the parts would be "portable" to the site of installation. Applicant respectfully traverses the rejection.

As with the first rejection, the Examiner repeated this rejection from the previous Office Action, but did not address Applicants' arguments and comments set forth in the response filed with the RCE. If this rejection is maintained, Applicants respectfully

request the Examiner address Applicants' arguments on pages 11-12 of the response filed October 14, 2005 in the next Office Action.

Claims 27 and 35 are rejected as being obvious over Rudinger, Trice, Daroga, Mayland, Hoshiko and Staub and further in view of Pearman (US 6,217,441). The Examiner asserts that it would have been obvious to substitute the inflatable sealing device of Pearman for the steel door of Rudinger because both are well known sealing devices within the bomb shelter arts and would work equally well. Applicant respectfully traverses the rejection.

As with the first rejection, the Examiner repeated this rejection from the previous Office Action, but did not address Applicants' arguments and comments set forth in the response filed with the RCE. If this rejection is maintained, Applicants respectfully request the Examiner address Applicants' arguments on pages 12-13 of the response filed October 14, 2005 in the next Office Action.

Claims 27 and 35 are rejected as being obvious over Rudinger, Trice, Daroga, Mayland, Hoshiko, and Staub, and further in view of Long et al. As with the first rejection, the Examiner repeated this rejection from the previous Office Action, but did not address Applicants' arguments and comments set forth in the response filed with the RCE. If this rejection is maintained, Applicants respectfully request the Examiner address Applicants' arguments on page 13 of the response filed October 14, 2005 in the next Office Action.

Claims 26, 27, and 32-36 are rejected as being obvious over Long et al. in view of Michielson (US 3,575,167). Claims 26, 31, and 32-36 are rejected as being obvious over Long et al. in view of Staub et al. As with the first rejection, the Examiner repeated this rejection from the previous Office Action, but did not address Applicants' arguments and comments set forth in the response filed with the RCE. If this rejection is maintained, Applicants respectfully request the Examiner address Applicants' arguments on page 13 of the response filed October 14, 2005 in the next Office Action.

Claims 37 and 38 are rejected as being obvious over Daroga in view of Trice and Holmes. The Examiner asserts that it would have been obvious to manufacture the fall-out shelter of Daroga as a group of interrelated parts to be assembled on site, as taught by

Trice, and that in doing so, the Daroga shelter would be considered a "kit" and that all of the parts would be "portable" to the site of installation. The Examiner also asserts that, as to the use of plumbing water traps, Holmes shows a breathing device for communicating fresh air from the fresh-air vent of a toilet, and that it would have been obvious for the oxygen generator of Daroga to include a tube for insertion through an existing plumbing water trap in order to provide fresh air. Applicants respectfully traverse the rejection.

As stated above with respect to independent claim 26, Applicants submit that neither Daroga nor Trice teach a "kit" as is recited in the original claims. Holmes does not appear to teach what Daroga and Trice lack. However, in the interest of furthering prosecution, independent claim 37 has been amended to clarify the kit as including a packaged set of objects. Applicants submit that the permanent, underground shelter of Daroga cannot be seen to be a kit including a packaged set of objects, and more particularly, as a packaged set of portable objects, as is claimed. Additionally, Trice does not supply what Daroga lacks because Trice is also directed to a permanent, underground shelter that is assembled on site in a hole. Thus, Trice cannot be deemed to teach a kit including a packaged set of portable objects, as is now claimed. Thus, the combination of Daroga and Trice fail to teach or suggest each and every element of the claims.

Additionally, as stated in the previous response, Applicant has not merely made a prior art kit "portable" as the Examiner appears to be asserting. Rather, the instant claims define a kit containing portable components. The kit includes a packaged set of objects including: (1) a portable sealing device, (2) a portable carbon dioxide scrubber, and (3) a portable gaseous oxygen source. *Ranco*, cited by the Examiner, states that "[n]o invention resides in merely changing the form or size of a device, or in merely making it portable or movable... and a somewhat different form of a familiar combination of elements, without achieving new functions or result." *Ranco, Inc. v. Gwynn et al.* 128 F.2d 437, 442; 54 USPQ 3 (1942). Applicant submits that the "device" of the instant claims is the entire kit, thus the claims are not merely directed to making a prior art device portable.

Further, the combination of elements recited in the claimed kit does achieve a new function or result. Daroga appears to teach a door, valve, and escape hatch that are

permanently installed in a bomb shelter that is "below ground covered by a layer 17 of earth or concrete." See column 1, line 65 through column 2, line 4. Trice similarly appears to teach a shelter permanently "assembled into a hole" and "covered with earth so as to provide the desired protective earth cover." See column 2, line 70 and column 3, lines 19-21. Applicant submits that Daroga and Trice teach bomb shelters and do not appear to teach a kit of any type. As the instant claims are not directed to a portable bomb shelter, the facts are distinguished from *Ranco*.

In response to Applicant's previous arguments that Daroga does not teach a portable sealing device, portable carbon dioxide scrubber, and portable gaseous oxygen source, the Examiner asserts that the inclusion of "portable" to the claim language is not regarded as inventive as it merely makes an old device portable or movable without producing any new and unexpected result. Applicant respectfully submits that the Examiner is not giving the term "portable" the meaning understood by one of ordinary skill in the art, and as described in the instant specification.

MPEP 2111 quotes *In re Morris*, 44 USPQ2d 1023, 1027-28 (Fed. Cir 1997):

the "PTO applies to verbiage of the proposed claims the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in applicant's specification."

(emphasis added). MPEP 2111.01 states that "[c]laim terms are presumed to have the ordinary and customary meanings attributed to them by those of ordinary skill in the art. *Sunrize Roots Enter. Co. v. SRAM Corp.*, 336 F.3d 1298, 1302, 67 USPQ2d 1438, 1441 (Fed. Cir. 2003)." MPEP 2111.01 further states:

It is the use of the words in the context of the written description and customarily by those skilled in the relevant art that accurately reflects both the "ordinary" and the "customary" meaning of the terms in the claims. *Ferguson Beauregard/Logic Controls v. Mega Systems*, 350 F.3d 1327, 1338, 69 USPQ2d 1001, 1009 (Fed. Cir. 2003) (Dictionary definitions were used to determine the ordinary and customary meaning of the words "normal" and "predetermine" to those skilled in the art. In construing claim terms, the general meanings gleaned from reference sources, such as dictionaries, must always be compared against the use of the terms in context, and the intrinsic record must always be consulted to identify

which of the different possible dictionary meanings is most consistent with the use of the words by the inventor.

(emphasis added). The MPEP thus states that claim terms are to be given the ordinary and customary meanings according to one of ordinary skill in the art, considering what information is provided in the specification. The instant specification recites kits containing sealing devices such as inflatable gas bladders, cured foam blocks, or sealing tape. See page 6, lines 10-17, and page 7, lines 1-12. Applicant submits that one of ordinary skill in the art, upon reading the instant specification, would understand that the term "portable" is used in the claimed phrase "portable sealing devices" according to the common dictionary definition of "carried or moved with ease" or "easily or conveniently transported". See the printout of online dictionary entries for "portable" submitted with the RCE.

The Examiner appears to be suggesting that the room itself is part of the claimed "kit". Instead, the claimed kit includes a packaged set of objects including at least one portable sealing device for sealing said room from any coupled ventilation ducts. Applicant submits that even if one were to combine the teachings of Daroga and Trice, one would not achieve "portable" kit components according to the use of the term in the instant specification and according to one of ordinary skill in the art. At best, a combination of Daroga and Trice would result in a permanent fall-out shelter made of materials delivered to the site of the shelter. Applicant submits that one of ordinary skill in the art would not consider the shelter of Daroga as a kit that includes a packaged set of objects, and would not consider the valve 52, air-tight door 16, and escape hatch 62 of Daroga as "portable" sealing devices.

According to the Examiner's interpretation of "portable", all of the components of a typical house, including the foundation, walls, flooring, etc. are portable simply because they are delivered to the building site and then assembled into a permanent house. Applicant submits that the Examiner is using an interpretation of "portable" that is contrary to the ordinary and customary meaning attributed to the term by those of ordinary skill in the art, and thus improper.

Additionally, there is no motivation to combine the teachings of Daroga and Trice. The complexity of the multi-room building of Daroga, with its air handling system is significantly different from the single room blast shelter of Trice, which does not appear to have any of the air handling features of the Daroga building. Applicant submits that even if one were to consider the precast bomb shelter of Trice to be a "kit", the elements are not "portable" as one of ordinary skill in the art would understand the term. Trice teaches assembling his shelter into a hole and then covering the entire shelter with earth. See column 2, line 70 and column 30, lines 19-21. The sections of the shelter of Trice are thus not portable, but are to be permanently buried in the ground. At best, one may view Trice as teaching the possibility of using precast walls to build the permanent, buried structure of Daroga. However, as Trice does not appear to teach a portable sealing device, portable carbon dioxide scrubber, and/or portable gaseous oxygen source, there is no motivation for one to supply such elements to the building of Daroga.

The Examiner cites *Ranco, Inc. v. Gwynn et al.* for stating that it is not inventive to merely make an old device portable or movable without producing any new and unexpected result. The Examiner's argument, however, does not follow the reasoning of the case. The Examiner's assertion is that it would have been obvious for the components of the Daroga shelter to be moved to the site of installation and then assembled, thus making the components "portable". Daroga teach his shelter "will be below ground covered by a layer 17 of earth or concrete." See column 2, lines 2-4. Daroga thus teach a shelter that is permanently buried under the ground. The device taught by Daroga is the completed, buried shelter. In applying *Ranco, Inc.*, it appears the Examiner is arguing that would have been obvious to make the air intake valve 52 of Daroga portable or removable. Applicant submits that there is no motivation or reasoning for doing so because Daroga teach a permanently installed and buried shelter. There is no suggestion or motivation for one to make the air intake valve of Daroga portable or removable because the valve is likely sized and configured to fit the particular ventilation shaft in the shelter. Making the air intake valve portable or removable would appear to serve no purpose and thus one of ordinary skill in the art would have no motivation for doing so. Withdrawal of the rejection is respectfully requested.

Further, there is no expectation of success in making the Examiner's asserted modification to Daroga. Applicant submits that not only is there no motivation or suggestion for making the valve, door or escape hatch of Daroga portable, but there is also no indication of how such a modification could or would be accomplished. Daroga teach the components of the shelter as being permanently assembled and buried to provide the desired level of protection. There appears to be no purpose or reason for modifying the permanent, buried shelter to include a portable sealing device as claimed. Daroga thus fail to teach each and every element of the claims. Trice does not appear to teach any ventilation ducts and thus does not teach or suggest any such sealing devices. The combination of Daroga and Trice thus fails to teach each and every element of the claims. Additionally, because both Daroga and Trice teach permanently installed, buried shelters, there is no motivation for one of ordinary skill in the art to modify the air intake valve 52 of Daroga to make it a portable sealing device. Withdrawal of the rejection is respectfully requested.

The above comments with respect to claims 37 and 38 are similar to the comments made in the amendment submitted with the RCE, in response to the Office Action mailed July 14, 2005. The Examiner did not address Applicants' comments in the current final Office Action. Applicants again respectfully request the Examiner respond to their comments and arguments if the rejections are maintained.

The Examiner asserts that it would have been obvious to include a tube for insertion through an existing plumbing water trap in view of the teaching in Holmes in order to provide fresh air. However, Daroga already provide an air intake 51 for providing fresh air. Thus, there is no need and no motivation for altering the permanent fallout shelter of Daroga to include an additional fresh air intake. It appears the only motivation for making such a modification of Daroga is found in Applicants' specification, which is improper.

Claim 38 states that the portable carbon dioxide scrubber is sized and configured to remove carbon dioxide directly from the room and the portable gaseous oxygen generator is sized and configured to provide a sufficient amount of oxygen directly to the room to meet the oxygen needs of two or more people residing in the room. None of

Daroga, Trice, or Holmes appear to teach or suggest such a kit. Holmes appears to teach a tube through which a single person breathes to obtain fresh air. The tube of Holmes does not appear to be configured and sized to provide oxygen directly to the room to meet the oxygen needs of two or more people in the room. Thus, even if one were to combine the teachings of Daroga, Trice, and Holmes, one would not arrive at the claimed invention. Withdrawal of the rejection is respectfully requested.

Claims 26, 28-31, 34 and 36 are rejected as being obvious over Rudinger in view of Trice and further in view of Daroga, Mayland, Hoshiko or Staub, and Holmes.

Rudinger teaches a permanent, buried, bomb shelter that can be provided with an air purifier that removes carbon dioxide from the air. See column 2, line 70 through column 3, line 4. Rudinger does not appear to teach or suggest a kit including a packaged set of objects including a portable sealing device for sealing the shelter from any coupled ventilation ducts, a portable carbon dioxide scrubber, or a portable gaseous oxygen source, as is recited in independent claim 26. Applicant submits that one of ordinary skill in the art would not interpret the bomb shelter of Rudinger as a kit containing portable components. It appears the Examiner is construing the term "portable" as meaning anything that is capable of being moved once to a location where it is permanently installed and not movable thereafter. Applicant submits that such interpretation is contrary of the common usage of "portable."

MPEP 2111 states that the verbiage of claims is to be given "the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art" and also states that the "broadest reasonable interpretation of the claims must also be consistent with the interpretation that those skilled in the art would reach", citing *In re Cortright*, 49 USPQ2d 1464, 1468 (Fed. Cir. 1999). Applicant submits that the term "portable" would be understood by one of ordinary skill in the art as not including a component that is moved once and then permanently installed, as is asserted by the Examiner. None of the cited references teach portable components as recited in the claims.

The Examiner asserts that it would have been obvious to include a breathing device as taught by Holmes for insertion through an existing plumbing water trap in order

to provide fresh air. Applicants respectfully disagree. Rudinger teach that "it is to be understood that the bombshelter 10 is provided with a suitable generator and air purifier." See column 2, lines 61-63. Rudinger also teach that an external ventilator duct with a reinforced filter may be used to provide fresh air to the shelter. See column 3, lines 4-16. Rudinger thus already provide for means to deliver fresh air into the shelter. Applicants submit that there is no motivation or suggestion for one of ordinary skill in the art to modify the bomb shelter of Rudinger with the breathing apparatus of Holmes, aside from Applicants' own specification. Further, as stated above, Daroga also teach a fresh air intake, so there is no need or motivation for one to modify the bomb shelter of either Daroga or Rudinger to include a tube such as that taught by Holmes. Withdrawal of the rejections is respectfully requested.

Claims 26, 27 and 32-36 are rejected as being obvious over Long in view of Michielson and Holmes. Claims 26, 31, and 32-36 are rejected as being obvious over Long in view of Staub and Holmes. Applicants respectfully traverse the rejections.

The Examiner asserts that it would have been obvious to include the apparatus of Michielson or Staub et al. in a kit containing the plastic sheeting and duct tape of Long et al. because Long et al. do not address how the interior atmosphere of the sealed room should be replenished. Applicant respectfully traverses the rejection. Long et al. specifically teach using a vacuum cleaner with a HEPA filter to provide clean filtered air and create positive pressure to the sealed room (page 52). Thus, there is no motivation for including the apparatus of Michielson or Staub et al. Withdrawal of the rejections is respectfully requested. The Examiner did not address the above argument in the final Office Action dated July 14, 2005 or the current Office Action. Applicant again respectfully requests the Examiner comment on the arguments in the next Office Action.

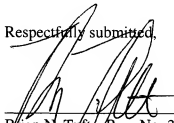
The Examiner also asserts that, with regard to the use of plumbing water traps, it would have been obvious for the generator to include a tube for insertion through an existing plumbing water trap in order to provide fresh air. Applicants respectfully disagree. As stated above, Long specifically teach using a vacuum cleaner with a HEPA filter to provide clean filtered air and create a positive pressure to the sealed room. Thus, there is no motivation for one of ordinary skill in the art to include an apparatus such as

Application Serial No. 09/818,383
Amendment dated February 7, 2006
Reply to Office Action dated December 7, 2005

that taught by Holmes. It appears the only motivation for making such a modification is found in Applicants' own specification, which is improper. Withdrawal of the rejections is respectfully requested.

In view of the foregoing, all of pending claims 26-38 are believed to be in condition for allowance. Reexamination and reconsideration are respectfully requested. If a telephone conference might be of assistance, please contact the undersigned attorney at (612) 359-9348.

Respectfully submitted,



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